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EXAMINER				
POLLOCK, GREGORY A				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/672,448

Applicant(s)

GREENSHIELDS ET AL.

Examiner

GREG POLLOCK

Art Unit

3695

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 August 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3, 5, 6, 8-14, 26, 27 and 37 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5, 6, 8-14, 26, 27, and 37 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/808)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. This action is responsive to claims filed 08/28/2008 and Applicant's request for reconsideration of application 10/672448 filed 08/28/2008.

The amendment contains original claims 3, 8-10, and 13.

The amendment contains amended claims 1, 2, 5, 6, 11, 12, 14, 26, 27, and 37.

Claims 4, 7, 15-25, 28-36, 38-66 have been canceled.

Claim Objections

2. The claims are objected to because of the following minor informalities:
 - a. Claim 1, lines 4-5 reads, "wherein the first contract does not give the supplier to right to make make-up deliveries following a period of force majeure" should be corrected to "wherein the first contract does not give the supplier the right to make make-up deliveries following a period of force majeure".

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
4. Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 1 is not sufficiently precise due to the combining of two different statutory classes of invention in a single claim. The preamble the claim refers to a method, but the body of the claim discusses the

specifics of the system. For example, Claim 1, lines 22-27 reads "wherein the first entity has a reserve account, separate from the collections account, that is sufficiently funded to make debt service payments on the debt instruments when the first entity is unable to supply the commodity to the recipient because of a force majeure condition for a predetermined time period during the term of the first supply contract.". The cited claim limit contains a structure "a reserve account" with functional limits defining its operation. Subsequently the claim then deals with the specifics of a method step. Method steps are readily defined by action words such as "receiving", "revising", "entering", and "offering". For example, claim 1, lines 19-22 reads "wherein payments by the recipient to the first entity under the revised first contract are deposited in a collections account of the first entity, and wherein payments by the first entity to the second entity under the second supply contract are paid from the collections account using a computerized electronic transfer system;" can be made into a method step by correcting the limit to read "paying by the recipient to the first entity under the revised first contract ~~are deposited~~ deposits in a collections account of the first entity, and wherein payments ~~deposits~~ by the first entity to the second entity under the second supply contract are paid from the collections account using a computerized electronic transfer system;". A claim is considered indefinite if it does not apprise those skilled in the art of its scope. *Amgen, Inc. v. Chugai Pharm. Co.*, 927 F. 2d 1200, 1217 (Fed. Cir. 1991). A claim is considered

indefinite if it does not apprise those skilled in the art of its scope. *Amgen, Inc. v. Chugai Pharm. Co.*, 927 F. 2d 1200, 1217 (Fed. Cir. 1991).

Claim Rejections - 35 USC § 101

5. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

6. Claims 1-3, 5, 6, 8-14, 26, 27, and 37 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.
- a. Claims 1-3, 5, 6, 8-14, 26, 27, and 37 are rejected under 35 U.S.C. 101

because the claimed invention is directed to non- statutory subject matter.

Based on Supreme Court precedent and recent Federal Circuit decisions, the Office's guidance to examiners is that a statutory § 101 process must (1) be tied to another statutory class (such as a particular apparatus) or (2) transform underlying subject matter (such as an article or materials) to a different state or thing. The claims do not recite the use of another statutory class or physical transformation. The claims recites steps involving monetizing a contract, without implementation on a machine such as computer. For example, claim 1, line 14 recites the limit "offering, by the first entity, interest-bearing debt instruments". The method step does not recite the use of another statutory category (such a computer). To resolve this deficiency, it must be made clear that an underlying apparatus is used to

perform the recited method. Merely stating the underlying apparatus in the preamble is not sufficient.

7. Claims 1-3, 5, 6, 8-14, 26, 27, and 37 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter (a judicial exception which is not used in a useful, concrete and tangible result). Claims 1-3, 5, 6, 8-14, 26, 27, and 37 are all directed towards creation of a contract. The claims merely describe an idea (a contract) and manipulation of abstractions, failing to produce a useful, concrete and tangible result.
8. 35 U.S.C. §101 requires that in order to be patentable the invention must be a "new and useful process, machine, manufacture or composition of matter or new and useful improvement thereof" (emphasis added). Applicant's claims 99-127 is intended to embrace or overlap two different statutory classes of invention as set forth in 35 U.S.C. §101. The preamble of claim 1 refers to a method but the body of the claim discusses the specifics of a product (limits in claim includes physical features of the product - see rejection of claims under 35 U.S.C. §112, second paragraph, for specific details regarding this issue)." A claim of this type is precluded by express language of 35 U.S.C. §101 which is drafted so as to set forth statutory the statutory classes of invention in the alternative only", Ex parte Lyell (17USPQ2d 1548).

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Examiner's note: Examiner has pointed out particular references contained in the prior art of record in the body of this action for the convenience of the Applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply. Applicant, in preparing the response, should consider fully the **entire** reference as potentially teaching all or part of the claimed invention, as well as the content of the passage as taught by the prior art or disclosed by the Examiner.

10. Claims 1, 3, 5, 8, 9, 13, 14, 26, 27, and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Applicant's background of invention (Greenshields et al., U.S. Application No. 10/672448, "BACKGROUND OF INVENTION" section and Figures 1 and 2, labeled prior art.) in view of Helms (PGPub No. 20040138971) in further view of Miller et. al. (GEORGE K. MILLER, CHRIS LIN AND ALEX L. WANG, Simpson Thatcher & Bartlett LLP, "PROJECT DOCUMENTATION: DEBT FINANCE", SEPTEMBER 15, 2002, pages 1-64) in further view of Dines et al. (PGPub No. 20020052793).

As per claim 1, Applicant's background of invention teaches a **method of monetizing a first contract** (Power Purchase Agreement ("PPA") [¶12], [¶14, lines 4-9] and [¶22, lines 1-2]) **to supply a commodity from a supplier** (power company [Figures 1 and 2, element 10]) **to a recipient** (utility [Figures 1 and 2, element 12]), **comprising:**
receiving by transfer, by a first entity, the first contract (the PPA is transferred to a special purpose vehicle (SPV) [¶14, lines 4-9] and [¶22, lines 2-6])

revising the first contract such that (a) the first entity may provide the commodity to the recipient from sources other than specified in the first contract (revised PPA ([¶14, lines 9-12] and ([¶22, lines 2-6)), and (b) the recipient is to pay a fixed price for the commodity under the revised first contract ([¶12] and [¶14, lines 8-14])
entering into, by the first entity with a second entity, a second contract (mirror PPA [Figures 1 and 2]) in which the second party agrees to supply the commodity from a second entity (power marketer [Figures 1 and 2, element 18]) to the first entity ([¶16, lines 1-3]);
and
offering, by the first entity, interest-bearing debt instruments (bonds [¶15, lines 1-2]), wherein the debt instruments have a term matching the term of the second contract ([¶16]),
wherein the first entity has a reserve account, separate from the collections account ([¶15] and [¶18]),

Applicant's background of invention does not specifically teach but does imply a method wherein the first contract does not give the supplier to right to make make-up deliveries following a period of force majeure;
that the fixed price the recipient pays for the commodity is different than that in the revised first contract;
wherein the price of the commodity in the second contract is less than the price of the commodity in the revised first contract;
wherein the debt service of the debt instruments is financed by the difference between the price for the commodity in the revised first contract and the price for the commodity in the second contract;
wherein payments by the recipient to the first entity under the revised first contract are deposited in a collections account of the first entity;
wherein payments by the first entity to the second entity under the second supply contract are paid from the collections account of the first entity using a computerized electronic;
a reserve account that is sufficiently funded to make debt service payments on the debt instruments when the first entity is unable to supply the commodity to the recipient because of a force majeure condition for a predetermined time period during the term of the first supply contract.

Helms teaches a method that wherein the first contract does not give the supplier to right to make make-up deliveries following a period of force majeure (the utility has the right to purchase power on the open market if a performance default occurs [¶46], [¶60], where "a period of force majeure" results in a "performance default" functionally no different than any other performance default, and is therefore, given no patentable weight.);
the fixed price the recipient pays for the commodity is different than that in the revised first contract; ([¶7, lines 1-6])

wherein the debt service of the debt instruments is financed by the difference between the price for the commodity in the revised first contract and the price for the commodity in the second contract ([¶7, lines 17-29]); wherein payments by the recipient to the first entity under the revised first contract are deposited in a collections account of the first entity (prepayment [¶7] and [¶31]).

It would have been obvious to one of ordinary skill in the art at the time of the invention to have combined the teachings of Helms with that of the Applicant's background of invention to obtain the claimed invention. The motivation to combine the teachings would be to provide a mechanism whereby the supply relationship cash flows can be approximately matched with undervalued Vendor Capital Obligation maturities to capture Intermediation Profits through the barter of these Obligations in settlement of supply invoices. Thus, both the vendor and buyer gain increased profits from their familiarity with a Contract's high Supply Value, which the credit markets may have significantly under valued due to a lack of understanding.

Applicant's background of invention and Helms do not specifically teach, but imply **a reserve account that is sufficiently funded to make debt service payments on the debt instruments when the first entity is unable to supply the commodity to the recipient because of a force majeure condition for a predetermined time period during the term of the first supply contract and wherein the price of the commodity in the second contract is less than the price of the commodity in the revised first contract and wherein payments by the first entity to the second entity under the second supply contract are paid from the collections account of the first entity using a computerized electronic transfer system.**

Miller et. al. teaches **a reserve account that is sufficiently funded to make debt service payments on the debt instruments when the first entity is unable to supply the commodity to the recipient because of a force majeure condition for a predetermined time period during the term of the first supply contract** ("The amount of damages payable is calculated, at a minimum, to cover project debt service payable during the period of delay" [page 4, lines 6-7] and [page 27, Debt Service Reserve Account or Debt Service Reserve Account] where one cause for delay is force majeure events [page 10, ¶1]).

It would have been obvious to one of ordinary skill in the art at the time of the invention to have combined the teachings of Miller et. al. with that of the Applicant's background of invention and Helms to obtain the claimed invention. Helms recognizes the need to be proactive in dealing with default risk, and suggests that a portion of the Trust capital be used to hedge to enhance the buyer's protection [¶46]. However, Helms does not indicate that this is a separate

reserve account. Therefore, the motivation to combine the teachings would be to provide a separate account which protects the buyer during a period of delayed service, thus increasing the participation of potential buyers.

Applicant's background of invention, Helms, and Miller et. al. do not specifically teach, but imply a method **wherein the price of the commodity in the second contract is less than the price of the commodity in the revised first contract and wherein payments by the first entity to the second entity under the second supply contract are paid from the collections account of the first entity using a computerized electronic transfer system.**

Dines et al. teach a method **wherein the price of the commodity in the second contract is less than the price of the commodity in the revised first contract ([¶15 - 16]). and wherein payments by the first entity to the second entity under the second supply contract are paid from the collections account of the first entity using a computerized electronic transfer system ([¶30] and [¶50-53]).**

It would have been obvious to someone skilled in the art at the time of the invention to have combined the teachings of Dines et al. with that of the Applicant's background of invention, Helms, and Miller et. al. to obtain the claimed invention. In the Applicant's background of invention, it is indicated that first entity (the SPV) makes payments to the second entity [¶17], but does not indicate where the funds are transferred from or how. The motivation to combine the teachings would be to provide a mechanism whereby the supply contract can be monetized that takes profit out of a supply relationship, thus increasing the immediate value of the entities involved. Further, automating the system reduced human error and increases the speed of the aggregation and payment process.

As per claim 3, the rejection of claim 1 has been addressed.
Applicant's background of invention teaches a method **wherein the first entity is owned by the supplier ([¶14, lines 4-8]).**

As per claim 5, the rejection of claim 4 has been addressed.
Applicant's background of invention teaches a method **further comprising paying principal and interest on the debt instruments from the first entity to holders of the debt instruments ([¶22, lines 3-5]).**

As per claim 8, the rejection of claim 5 has been addressed.
Applicant's background of invention teaches a method **further comprising establishing an administrative services agreement between the first entity and an administrative agent ([¶23, lines 2-5]).**

As per claim 9, the rejection of claim 5 has been addressed.
Applicant's background of invention teaches a method **further comprising establishing the first entity as a subsidiary of the supplier** ([¶14, lines 4-8]).

As per claim 13, the rejection of claim 1 has been addressed.
Applicant's background of invention teaches a method **further comprising the third-party guarantor guarantying payment obligations of the second entity to the first entity arising out of the second contract** ([¶22, lines 6-11]).

As per claim 14, the rejection of claim 1 has been addressed.
Applicant's background of invention teaches a method **wherein revising the first contract includes revising the first contract such that the revised first contract obligates the recipient to pay a fixed price to the first entity for capacity to supply the commodity** ([¶ 12] and [¶14, lines 8-14]).

Applicant's background of invention does not teach a method that **obligates the recipient to pay an index-based price for the commodity**.

Helms teaches a method that **obligates the recipient to pay an index-based price for the commodity** (a "spread" between the costs of funds furnished the Trust and the purchased obligation yields [¶37]).

It would have been obvious to one of ordinary skill in the art at the time of the invention to have combined the teachings of Helms with that of the Applicant's background of invention to obtain the claimed invention. The motivation to combine the teachings would be to provide a mechanism whereby the supply relationship cash flows can be approximately matched with undervalued Vendor Capital Obligation maturities to capture Intermediation Profits through the barter of these Obligations in settlement of supply invoices. Thus, both the vendor and buyer gain increased profits from their familiarity with a Contract's high Supply Value, which the credit markets may have significantly under valued due to a lack of understanding.

As per claim 26, the rejection of claim 22 has been addressed.
Applicant's background of invention teaches a method **wherein the recipient is a government agency for managing the power procurement for a governmental entity** ([¶2]).

As per claim 27, the rejection of claim 26 has been addressed.
Applicant's background of invention does not teaches a method **further comprising the recipient offering debt securities, wherein the recipient is obligated to pay the entity for power under the revised first contract prior to servicing the debt securities offered by the recipient**.

Helms teaches a method that **further comprising the recipient** ([¶57, lines 8-13]) **offering debt securities** (BIP Units [¶58, lines 10-12] and [¶53]), **wherein the recipient is obligated to pay the entity for power under the revised first contract prior to servicing the debt securities offered by the recipient** ([¶62]).

It would have been obvious to one of ordinary skill in the art at the time of the invention to have combined the teachings of Helms with that of the Applicant's background of invention to obtain the claimed invention. The motivation to combine the teachings would be to provide a mechanism whereby the supply relationship cash flows can be approximately matched with undervalued Vendor Capital Obligation maturities to capture Intermediation Profits through the barter of these Obligations in settlement of supply invoices. Thus, both the vendor and buyer gain increased profits from their familiarity with a Contract's high Supply Value, which the credit markets may have significantly under valued due to a lack of understanding.

As per claim 37, the rejection of claim 15 has been addressed. Applicant's background of invention teaches a method **wherein establishing the second contract includes providing a liquidated damages clause in the second contract obligating the power supplier to pay liquidated damages to the first entity under certain specified conditions in the second contract** ([¶20, lines 1-5] and [¶22, lines 6-9]), **and further comprising a third-party guarantor guarantying payment obligations of the power supplier under the second contract, including the liquidated damages** ([¶22, lines 6-9]).

11. Claims 2 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Applicant's background of invention (Greenshields et al., U.S. Application No. 10/672448, "BACKGROUND OF INVENTION" section and Figures 1 and 2, labeled prior art.) in view of Helms (PGPub No. 20040138971) in further view of Miller et. al. (GEORGE K. MILLER, CHRIS LIN AND ALEX L. WANG, Simpson Thatcher & Bartlett LLP, "PROJECT DOCUMENTATION: DEBT FINANCE", SEPTEMBER 15, 2002, pages 1-64) in further view of Dines et al. (PGPub No. 20020052793) in further view of Remley et al. (PGPub No. 20020023052).

As per claim 2, the rejection of claim 1 has been addressed.

Applicant's background of invention, Helms, Miller et. al., and Dines et al. do not teach a method **further comprising guaranteeing, by a third-party guarantor, payment obligations of the first entity to the recipient arising out of the revised first contract, wherein the third-party guarantor's guaranty of the payment obligations of the first entity is capped by a maximum liability limitation amount.**

Helms teaches a method that **further comprising guaranteeing, by a third-party guarantor, payment obligations of the first entity to the recipient arising out of the revised first contract** ([Figures 9-11], [¶47] 50).

It would have been obvious to one of ordinary skill in the art at the time of the invention to have combined the teachings of Helms with that of the Applicant's background of invention to obtain the claimed invention. The motivation to combine the teachings would be to provide a mechanism whereby the supply relationship cash flows can be approximately matched with undervalued Vendor Capital Obligation maturities to capture Intermediation Profits through the barter of these Obligations in settlement of supply invoices. Thus, both the vendor and buyer gain increased profits from their familiarity with a Contract's high Supply Value, which the credit markets may have significantly under valued due to a lack of understanding.

Applicant's background of invention, Helms, Miller et. al., and Dines et al. do not teach a method **wherein the third-party guarantor's guaranty of the payment obligations of the first entity is capped by a maximum liability limitation amount.**

Remley et al. teaches a method **wherein the third-party guarantor's guaranty of the payment obligations of the first entity is capped by a maximum liability limitation amount** ([¶10] and [¶78]).

It would have been obvious to someone skilled in the art at the time of the invention to have combined the teachings of Remley et al. with that of the Applicant's background of invention, Helms, Miller et. al., and Dines et al. such that the third-party guarantor's guaranty of the payment obligations of the first entity is capped by a maximum liability limitation amount. The motivation to combine the teachings would be to increase protection to the guarantor for large revenue percentage deviations from historic values.

As per claim 10, the rejection of claim 9 has been addressed.

Applicant's background of invention, Helms, Miller et. al. ,and Dines et al. do not teach a method **wherein the second entity is a subsidiary of the third-party guarantor.**

Remley et al. teaches a method **wherein the second entity** (producer [Figure 1, element 12]) **is a subsidiary of the third-party guarantor** (guarantor [Figure 1, element 10] and [¶7], [¶28 – 29], where the guarantor is the controlling entity which decides business matter for the producer.).

It would have been obvious to someone skilled in the art at the time of the invention to have combined the teachings of Remley et al. with that of the Applicant's background of invention, Helms, Miller et. al. ,and Dines et al. such that the second entity is a subsidiary of the third-party guarantor. The motivation to combine the teachings would be to greatly reduce the risks associated with the second entity for obtaining payment and for the guarantor on ensuring the transactions between the first entity, second entity, and power distributor is competed.

12. Claims 6, 11, and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Applicant's background of invention (Greenshields et al., U.S. Application No. 10/672448, "BACKGROUND OF INVENTION" section and Figures 1 and 2, labeled prior art.) in view of Helms (PGPub No. 20040138971) in further view of Miller et. al. (GEORGE K. MILLER, CHRIS LIN AND ALEX L. WANG, Simpson Thatcher & Bartlett LLP, " PROJECT DOCUMENTATION: DEBT FINANCE", SEPTEMBER 15, 2002, pages 1-64) in further view of Dines et al. (PGPub No. 20020052793) in further view of Blanz et al. (PGPub No. 20050102224).

As per claim 6, the rejection of claim 5 has been addressed. Applicant's background of invention, Helms, Miller et. al. ,and Dines et al. do not teach a method **wherein a debt service coverage ratio of the debt instruments is between 1.00 and 1.01.**

Blanz et al. teaches a method **wherein a debt service coverage ratio of the debt securities is between 1.00 and 1.01** ([¶9] [¶105] [¶179]).

It would have been obvious to someone skilled in the art at the time of the invention to have combined the teachings of Blanz et al. with that of the Applicant's background of invention, Helms, Miller et. al. ,and Dines et al. such that a debt service coverage ratio of the debt securities is between 1.00 and 1.01. The motivation to combine the teachings would be to ensure that the first entity could be underwritten such as not to hindered the financing of the monetization.

As per claim 11, the rejection of claim 4 has been addressed.

Applicant's background of invention, Helms, Miller et. al. ,and Dines et al. do not teach a method **wherein the debt instruments include senior secured notes**.

Blanz et al. teaches a method **wherein the debt instruments include senior secured notes** (senior bonds [¶70 - 78], [¶149], [¶151], [¶159], [¶178], [¶180]).

It would have been obvious to someone skilled in the art at the time of the invention to have combined the teachings of Blanz et al. with that of the Applicant's background of invention, Helms, Miller et. al. ,and Dines et al. such that the debt securities include senior secured notes. The motivation to combine the teachings would be to ensure that the first entity, and thus the power company, could be repaid prior to payment of subordinated notes, bond holders.

As per claim 12, the rejection of claim 4 has been addressed.

Applicant's background of invention, Helms, Miller et. al. ,and Dines et al. do not teach a method **wherein the debt instruments include subordinated notes**.

Blanz et al. teaches a method **wherein the debt instruments include subordinated notes** (junior or subordinated bonds [¶149], [¶151], [¶159], [¶178], and [¶180]).

It would have been obvious to someone skilled in the art at the time of the invention to have combined the teachings of Blanz et al. with that of the Applicant's background of invention, Helms, Miller et. al. ,and Dines et al. such that the debt securities include senior secured notes. The motivation to combine the teachings would be to ensure that the first entity, and thus the power company, could be repaid prior to payment of subordinated notes, bond holders.

Response to Arguments

13. Applicant's arguments with respect to claims 1-3, 5, 6, 8-14, 26, 27, and 37 have been considered but are moot in view of the new ground(s) of rejection. The rejection above serves as the examiners response to the applicant's arguments.

Conclusion

14. Applicant's amendment did not necessitate the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE NON-FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory Pollock whose telephone number is 571

270-1465. The examiner can normally be reached on 7:30 AM - 4 PM, Mon-Fri Eastern Time.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jay Kramer can be reached on 571 272-6783. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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